

All New Is Well-Forgotten Old

Is the New Anti-Corruption Commission in Bulgaria New and Efficient Indeed

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Bulgaria is a country with key location in Southeast Europe. An EU member state since 2007, it serves as a “guardian” of the Union’s outer border. Although Bulgaria joined the EU 11 years ago, it still has to make progress in the areas of judicial reform, corruption and organized crime. The European Commission is “measuring” the advancement in these fields through benchmarks established in the Cooperation and Verification Mechanism¹ (CVM) via reports published on a regular basis. One of the benchmarks applies to high-level corruption.

In the 2017 Corruption Perceptions Index² Bulgaria scored 43, i.e. it is still perceived as the most corrupt country in the EU and it ranked last among all member states in the 2017-2018 WJP Rule of Law Index³. 11 years are enough political time for a country to show notable progress. Instead, we continue to witness hesitant and controversial reforms. The main reason, as in many other places, is lack of political will. This conclusion has been repeated many times in the CVM reports with various (although always diplomatic) wording.

How the Bulgarian government tackles high-level corruption?

Driven by the reports’ recommendations and desire to lift the CVM, in 2014 the government introduced a 5-year horizon anti-corruption strategy. Rather abstract than a practical document, it was better than nothing. Shortly thereafter, the discussions on the necessity of a specialized anti-corruption legislation began. The finally adopted law (January 2018) outlined a questionable model of the first of such kind anti-corruption body in Bulgaria:

Firstly, it is not a new body, but a composition of 5 *already existing* structures with a focus on unlawfully acquired assets forfeiture. The new Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission⁴ (hereinafter the Commission) has no authority to investigate and prosecute corruption crimes. However, joint actions between the Commission, the prosecution and the Ministry of Interior are possible. The question that excites us all is how such mega-structure with diverse powers could add value to the fight against corruption? Some even called it an institutional “Frankenstein”. Here is a breakdown of the Commission’s structure:

- 1) Ex-Unlawfully Acquired Assets Forfeiture Commission;
- 2) Ex-Commission for Prevention and Ascertainment of Conflict of Interest;
- 3) Public register for disclosure of property, income and expenses of high-rank officials – initially part of the National Audit Office;

¹ Learn more about the CVM here: https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en

² <http://transparency.bg/wp-content/uploads/2018/02/cpi-eng.png>

³ <http://data.worldjusticeproject.org/#/groups/BGR>

⁴ This translation is preferred by the author.

- 4) Center for Prevention and Countering Corruption and Organized Crime – the Center collected and analyzed data from sensitive to corruption areas (as procurement, healthcare and others). Its overall activity was related to prevention;
- 5) The Specialized Anti-Corruption Directorate – ex-part of the State Agency for National Security, responsible for activities related to corrupt behavior of high-rank officials.

Many wonder why exactly the Unlawfully Acquired Assets Forfeiture Commission is the core of this new anti-corruption body. It has relatively young and pure history and it produces results in numbers. For 2017 a total value of BGN 23,676,263.79⁵ in assets acquired from criminal activity was withdrawn by the Commission. And governments like numbers: they are easy to sell and easy to buy on the international political market. What a better way to symbolize and declare success? That might be true, but there is one little detail: any unlawfully acquired asset is a product of a criminal activity that **has already been executed**. In other words, the overall environment has been hospitable enough to nurture corruption in the long run. The deficiencies of the environment and the collective state of mind accepting corrupt behavior will not be healed with dazzling numbers.

Secondly, the formation of the Commission is also disturbing. It is comprised of 5 members: Chair, Deputy Chair and 3 regular members, elected by the National Assembly with a simple majority for a term of 6 years. This key appointment turns out to be political. Such a long mandate hides risk of adherence to power and reproduction of dependencies, especially in a country with short and fragile democratic history. A suitable mandate would have been 3/4-year term with the possibility of re-election (even the Executive Director of EUROPOL has a 4-year term with the possibility of a second) and strong accountability mechanisms. If an election procedure remains dubious, that leaves a mark in the public space. The formation and statute of the Commission might seem insignificant for the unbiased observer but they are key part of the bigger picture. The future will show exactly how and towards whom the Commission will exercise its powers. Since January there have been a number of very public actions regarding bribery cases. I reserve the right to observe its activity for a little longer and express my opinion later.

Last but not least, the provisioned whistleblower protection is minimalistic. It should be noted that according to the Bulgarian legislation anonymous signals are not to be considered, however, institutions do receive them. The new anti-corruption law says that: *“any person, who has been dismissed, prosecuted or subjected to acts leading to mental or physical harassment by reason of having submitted a signal, shall be entitled to compensation for any material and non-material damage suffered thereby, according to a judicial procedure”*. This is a post factum measure, which I do not find satisfying enough.

It is important for our society to understand maturely corruption and anti-corruption. The latter is not only

⁵ See pg. 12: <http://www.ciaf.government.bg/web/attachments/Page/56/2399/5abe4080c6807.pdf>

institutional or political but a common responsibility. In this process education and proactive intolerance towards corruption will pave the way to a better life in a better country.